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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

In re J.G., a Person Coming Under the  
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

J.G.,

Defendant and Appellant.

F058087

(Super. Ct. No. JJD058005)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Tulare County. Hugo J. Loza, Judge.

Paul E. Lacy, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Senior Assistant Attorney General, Kathleen A. McKenna and Sarah J. Jacobs, Deputy Attorneys General, for Plaintiff and Respondent.

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\* Before Vartabedian, Acting P.J., Wiseman, J., and Levy, J.

The court readjudged appellant, J.G., a ward of the court (Welf. & Inst. Code, § 602)<sup>1</sup> after appellant admitted allegations in a petition charging him with violating a gang injunction (Pen. Code, § 166, subd. (a)(4)).

On appeal, appellant contends the court erred in setting his maximum term of confinement. We will find merit to this contention and reverse the court's order setting this term. In all other respects, we will affirm.

### **FACTS**

On March 19, 2009, the district attorney filed a fifth amended petition charging appellant with possession of less than an ounce of marijuana (Health & Saf. Code, § 11357, subd. (b)), delaying a police officer (Pen. Code § 148, subd. (a)(1), and two counts of violating a gang injunction. On May 1, 2009, appellant admitted one count of violating a gang injunction in exchange for the dismissal of the remaining counts.

On May 22, 2009, the court aggregated time from prior petitions and set appellant's maximum term of confinement at eight years. The court also reinstated appellant's probation and released him to the custody of his parents.

### **DISCUSSION**

The parties agree the juvenile court erred in specifying the maximum term of confinement because, although appellant was found to be a ward of the court, he was placed in his parents' physical custody. We accept respondent's concession that the juvenile court erred and will remand for the juvenile court to strike its finding concerning appellant's maximum term of commitment.

Section 726 deals with the maximum term of confinement in juvenile wardship cases. (*In re Sean W.* (2005) 127 Cal.App.4th 1177, 1187.) Subdivision (c) of section 726 (§ 726(c)) requires the juvenile court to specify that the minor may not be confined

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<sup>1</sup> Unless otherwise indicated, all further statutory references are to the Welfare & Institutions Code.

for a period in excess of the maximum term of imprisonment that could be imposed on an adult convicted of the offense that brought the minor under the jurisdiction of the juvenile court. By its express terms, however, section 726(c) applies only “[i]f the minor is removed from the physical custody of his or her parent or guardian ....” (§ 726(c); See *In re Ali A.* (2006) 139 Cal.App.4th 569, 573 (*Ali A.*); See also, *In re Matthew A.* (2008) 165 Cal.App.4th 537, 541 (*Matthew A.*).)

Physical confinement is defined under the statute as “placement in a juvenile hall, ranch, camp, forestry camp or secure juvenile home pursuant to Section 730, or in any institution operated by the Youth Authority.” (§ 726(c).) Where, as here, a minor is not removed from the physical custody of his parents or guardian, section 726(c) does not apply. The juvenile court is not required under section 726(c) to include a maximum term of confinement in its dispositional order, and the setting of a maximum term of confinement “is of no legal effect.” (*Ali A.*, *supra*, 139 Cal.App.4th at p. 574).

In *Ali A.*, the court found the minor was not prejudiced when the juvenile court announced the maximum term of confinement and did not modify the disposition order. (*Ali A.*, *supra*, 139 Cal.App.4th at pp. 573-574.) Although the *Ali A.* court believed the minor was not prejudiced by the inclusion of the unlawful term and therefore did not order it stricken, we choose to order it stricken in order to discourage this unlawful practice. (*Matthew A.*, *supra*, 165 Cal.App.4th at p. 541.)

### **DISPOSITION**

The juvenile court’s order setting appellant’s maximum term of confinement is reversed and the juvenile court is directed to vacate it on remand. The remaining orders of the juvenile court are affirmed.